

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**  
Alexandria Division

In re:

JERRY DONNELL SMITH,

Debtor.

Case No. 06-11011-RGM  
(Chapter 7)

**MEMORANDUM OPINION**

THIS CASE is before the court on the proposed stipulation and order for dismissal pending appeal. The stipulation is endorsed only by debtor's counsel and creditor's counsel. It is not endorsed by the chapter 7 trustee.

This case was originally filed as a chapter 11 proceeding. Relief from the stay was granted and the debtor took an appeal. Thereafter, the case was converted to a proceeding under chapter 7. The trustee filed a report of no distribution on October 31, 2007. However, it does not appear that the trustee has abandoned any property of the estate. One of the assets of the estate is the debtor's interest in the appeal to the District Court.

The appeal cannot be dismissed simply on the debtor's and creditor's agreement once a chapter 11 case has been converted to a chapter 7. The chapter 7 trustee has an interest in the appeal and must join in the stipulation. The proposed stipulation and order for dismissal pending appeal will be returned to counsel because it has not been fully endorsed by all parties to the appeal, that is to say, by the chapter 7 trustee.

DONE at Alexandria, Virginia, this 19th day of November, 2007.

/s/ Robert G. Mayer

Robert G. Mayer  
United States Bankruptcy Judge

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